

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:10-CV-232-FL

DIRECTV, INC., a California corporation,

Plaintiff,

v.

KATHRYN ALINE STEEL, Individually,
and d/b/a The Bermuda Triangle, a/k/a
Bermuda Triangle; GLEN STEEL,
Individually, and d/b/a The Bermuda
Triangle, a/k/a Bermuda Triangle,

Defendants.

ORDER

This matter comes before the court on defendants' motion to set aside entry of default (DE #29). Plaintiff has notified the court through responsive filing that plaintiff does not oppose defendants' motion. The issues raised therefore are ripe for adjudication. For the reasons that follow, defendants' motion to set aside entry of default is granted.

Plaintiff initiated this action by filing its complaint on June 9, 2010. Defendants were properly served but failed to plead or otherwise defend within the time permitted. On September 21, 2010, the clerk of court entered default against defendants upon motion by plaintiff. On October 20, 2010, plaintiff moved for default judgment against defendants, on which motion the court conducted a hearing on November 22, 2010. Defendants appeared at hearing, unrepresented, and made an oral motion to continue. The court granted defendants' motion and continued the hearing to December 22, 2010.

On December 10, 2010, Ray M. Kline filed a notice of appearance on behalf of defendants,

together with a late filed answer. By order issued December 14, 2010, the court construed defendants' late answer as a motion to set aside entry of default and ordered defendants to show cause sufficient to set aside entry of default. The court further advised that upon showing of good cause and with the consent of plaintiff, the court would set aside entry of default and dispense with the hearing on plaintiff's motion for default judgment. Through counsel, defendants filed the instant motion to set aside entry of default, properly supported, on December 17, 2010. On December 20, 2010, plaintiff notified the court that it has no opposition to the relief requested by defendants.

Under Rule 55(c), "[t]he court may set aside an entry of default for good cause" Fed. R. Civ. P. 55(c). Rule 55(c) is "liberally construed in order to provide relief from the onerous consequences of defaults and default judgments." Lolatchy v. Arthur Murray, Inc., 816 F.2d 951, 954 (4th Cir. 1987). The Fourth Circuit has "repeatedly expressed a strong preference that, as a general matter, defaults be avoided and defenses be disposed of on their merits." Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc., 616 F.3d 413, 417 (4th Cir. 2010).

For good cause shown, and without opposition by plaintiff, defendants' motion to set aside entry of default (DE # 29) is GRANTED. Accordingly, plaintiffs' motion for default judgment (DE #16) is DENIED AS MOOT. The court dispenses with the hearing on plaintiff's motion for default judgment currently scheduled for December 22, 2010. A separate order will follow addressing scheduling matters.

SO ORDERED, this the 20TH day of December, 2010.



LOUISE W. FLANAGAN
Chief United States District Judge